



Comptroller General
of the United States

Washington, D.C. 20548

Coles 1/7/91

Decision

Matter of: Image Industries, Inc.

File: B-248227

Date: July 13, 1992

William E. Hughes III, Esq., Whyte & Hirschboeck, for the protester.

James E. Fender, Esq., Department of the Navy, for the agency.

Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where the contracting officer finds the prospective awardee to be a responsible contractor based in part on the contractor's past performance record with the requiring agency and where there is no showing that this determination was made in bad faith, there is no basis to object to the agency's affirmative determination of the prospective awardee's responsibility.

DECISION

Image Industries, Inc. protests the award of a contract to BP Chemicals (HITCO) Inc. under request for proposals (RFP) No. N00102-92-R-0144, issued by the Department of the Navy for welding studs. Image contends that HITCO does not have the capability to manufacture or supply welding studs which will comply with the requirements of the solicitation.

We deny the protest.

The RFP, issued on November 15, 1991, called for two types of welding studs, steel studs with ferrule and bi-metallic studs with ferrule; the studs are required to support the Depot Modernization Period of a nuclear submarine.

Four offerors submitted offers by the December 16 closing date. Since HITCO offered the low price for the bi-metallic

welding studs with ferrule, the contracting officer awarded HITCO the contract for these items.¹

Image challenges the agency's determination that HITCO will be able to supply bi-metallic welding studs with ferrule conforming to the contract requirements. To support this allegation, Image states that the contracting officer should have found HITCO ineligible for award because HITCO proposed to supply the same welding studs that the Navy previously deemed unacceptable in connection with a subcontract HITCO had around 1985 or 1986. The protester argues that the contracting officer's affirmative determination of HITCO's responsibility was improper because it was based on the contracting officer's incomplete assessment of HITCO's past performance, which did not consider the past performance problems encountered by HITCO during the performance of this particular subcontract. The protester also suggests that the contracting officer could not have in good faith determined that the awardee will be able to satisfy the requirements of the solicitation because HITCO is not listed in the Thomas Register² as being involved in the stud welding industry.

Procurement authorities are presumed to act in good faith when they make affirmative determinations of responsibility. In order for our Office to conclude otherwise, the record must show that the procuring officials had a specific intent to harm the protester. NFI Mgmt. Co., 69 Comp. Gen. 515 (1990), 90-1 CPD ¶ 548. We find no showing of bad faith here.

The record shows that the contracting officer knew that none of the offerors, including the protester and HITCO, had recently manufactured these particular studs. Despite HITCO's lack of recent experience manufacturing the particular studs called for in the solicitation, the record shows that the contracting officer based his affirmative determination of HITCO's responsibility on the following factors: (1) HITCO's previous performance record with the requiring activity demonstrates that HITCO's past performance has been satisfactory; (2) the contracting officer was not aware of any problems that HITCO may have encountered in the past during the course of manufacturing studs for private industries involved in pressure vessel construction; and

¹The contracting officer also awarded a contract to TRW Nelson for the steel studs because TRW submitted the lowest price for these items. Image does not protest that award.

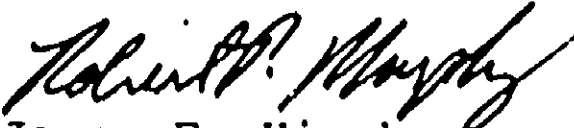
²The Thomas Register is a multi-volume compilation of products and services, company profiles, and company catalog data.

(3) HITCO indicated in its offer that, pursuant to two Navy contracts it was awarded in the early 1980s, it had produced the type of welding stud called for in the RFP.

The protester's assertion that the contracting officer failed to consider HITCO's alleged unsatisfactory performance in 1985 or 1986--although he did consider two of HITCO's earlier contracts--does not, by itself, demonstrate that the contracting officer was motivated by bad faith. In this regard, the protester has not alleged or shown that the contracting officer was either aware of these failures or that the contracting officer purposely decided to ignore them in order to steer the award to HITCO.³ To the extent that the protester is arguing that the contracting officer should have known about them, our review of affirmative responsibility determinations does not extend to cases that may involve negligence. American Athletic Equip. Div., AMF Inc.--Recon., 59 Comp. Gen. 90 (1979), 79-2 CPD ¶ 344.

Contrary to the protester's suggestion, the fact that HITCO is not listed in the Thomas Register as a stud welding manufacturer likewise does not establish bad faith on the part of the contracting officer. Although the lack of a listing could raise a question as to a firm's participation in a particular industry, it just as likely could indicate a simple failure by the firm or the publisher to accurately list the firm's activities. Thus, the fact that the contracting officer found HITCO responsible despite its omission from the Thomas Register in no way establishes that the responsibility determination was made in bad faith.

The protest is denied.


for James F. Hinchman
General Counsel

³In fact, the protester failed to provide sufficient information in its protest to identify the subcontract to which it refers. Only in its comments on the agency report did Image for the first time specifically identify the subcontract and describe the alleged problem with the studs furnished by HITCO.